

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**WILLIAM M. SMITH,**

Plaintiff,

v.

**DEPUTY MARSHALL, SERGEANT JANE  
DOE, LIEUTENANT SHIPLEY, and BOB  
WOLFE,**

Defendants.

Case No.: 3:12-cv-122-PK

**OPINION AND ORDER ADOPTING  
FINDINGS AND RECOMMENDATIONS**

William M. Smith, SID. #6978452 / EOCI, 2500 Westgate, Pendleton, OR 97801. In Propria Personam.

Gerald L. Warren, 901 Capitol St. N.E., Salem, OR 97301. Attorney for Defendants Marshall, Shipley and Wolfe.

**SIMON, District Judge.**

On December 10, 2012, United States Magistrate Judge Paul Papak filed Findings and Recommendation (“F&R”) in the above captioned case. Dkt. 59. Judge Papak made the following recommendations: (1) that final judgment should be entered in favor of all defendants on Plaintiff’s claims against defendants in their official capacities; (2) that Plaintiff’s claims against Sergeant Jane Doe in her individual and official capacity should be dismissed without prejudice; and (3) that all other claims made against defendants in their individual capacities should be dismissed with prejudice. Plaintiff has filed an objection, along with a Memorandum in Support and an Affidavit. Dkts. 70-72.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiff filed objections requesting that the court dismiss his claims without prejudice. *See McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009) (dismissal without prejudice “leaves open the possibility for future litigation and [is] not, therefore, [an] adjudicate[ion] on the merits,” whereas dismissal with prejudice “forecloses the possibility that the underlying claims will be addressed by a federal court.”). Judge Papak considered the merits of Plaintiff’s claims and found them unconvincing. The Court has reviewed *de novo* those portions of Judge Papak’s findings and recommendation to which Plaintiff has objected, and agrees with Judge Papak’s reasoning. Because Judge Papak reached the merits of Plaintiff’s claims against defendants Marshall, Shipley, and Wolfe, the Court finds that dismissal of those claims with prejudice is the appropriate resolution.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe a standard of review. Indeed, where there are no objections, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or

any other standard.” *Thomas*, 474 U.S. at 154. Furthermore, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

For those portions of Judge Papak’s findings and recommendation to Plaintiff has not objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

Therefore the Court orders that Judge Papak’s findings and recommendation, Dkt. 59, is ADOPTED. Defendants’ Motion for Summary Judgment, Dkt. 38, is GRANTED and the above captioned case is DISMISSED consistent with Judge Papak’s findings and recommendation.

IT IS SO ORDERED.

Dated this 28th day of March, 2013.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge